

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-107-01048C

Parcel No. 8947-28-330-001

Commerce Building, LLC,
Appellant,

v.

Sioux City Board of Review,
Appellee.

Introduction

This appeal came on for telephone hearing before the Property Assessment Appeal Board (PAAB) on April 11, 2016. Commerce Building, LLC (Commerce) was represented by its property manager James Johnson. Attorney Jack Faith represented the Sioux City Board of Review.

Commerce is the owner of a commercial office building located 520 Nebraska Street, Sioux City. The five-story building with a basement was built in 1913 and has 107,421 square feet of gross building area. The site is 0.516 acres.

The property's January 1, 2015, assessment was \$910,000, allocated as \$87,100 in land value and \$822,900 to improvement value. Commerce protested to the Board of Review and asserted the property is assessed for more than the value authorized by law under section 441.37(1)(a)(1)(b). The Board of Review reduced the assessment to \$867,800.

Commerce then appealed to PAAB reasserting its claim.

Findings of Fact

James Johnson testified about the history of the subject property. He explained Commerce purchased it in 2004 and was subsequently remodeled to house six state agency offices. After a few years, Commerce lost the lease for one of the state agency offices; and it has been unsuccessful in re-leasing this portion of the building since that time. Currently, two non-profits occupy space in the building free of charge, on a month-to-month basis.

Johnson also noted some energy issues that affected the income and expenses of the building in 2014. Utilities in 2012 and 2013 were roughly \$81,500 to \$93,000 respectively. However, in 2014, the utility expenses jumped to just over \$130,000. He explained that the increase was the result of a faulty boiler. He believes the issue has been resolved.

Johnson testified that overall the building was generally in good repair, especially where remodeling had occurred. Other parts of the building, which have not received updating, have more deferred maintenance.

In Johnson's opinion, the subject property is worth around \$640,000. He based this opinion on the property's actual rents and expenses. To do this, he averaged the 2012-2013 income and expenses. He excluded the 2014 expenses due to the boiler issues that he believed skewed the expenses for that year. He did not provide any written documentation of his calculations, and his testimony was unclear; however he essentially arrived at a net operating income (NOI) of roughly \$76,000, which deducted the real estate taxes as an expense. He then applied a capitalization rate of 12%, resulting in a \$635,000 value conclusion. He stated that he based the capitalization rate on his knowledge of other income properties in downtown Sioux City.

City Assessor Al Jordan testified for the Board of Review. He explained that the assessment was based on the income approach and information submitted by the property owner to the Board of Review. The sales comparison and cost approach were not considered.

An effective gross income was determined of \$338,857, which included an allocation of 25% for vacancy and collection loss. After expenses, an NOI of \$104,138

determined. Jordan explained this was very similar to the petitioner's NOI of \$102,259 before expenses for property tax. Jordan explained that instead of using property taxes as an expense, he used an effective tax rate to account for this factor. Jordan used a capitalization rate of 8.22%. He testified that typically the capitalization rate for Sioux City is 6% or 7%; however, in this case the subject property had some obsolescence, in addition to its vacancy, so the capitalization rate was increased to account for the obsolescence and its age. An effective capitalization rate of 3.78% was then applied to reach a total loaded capitalization rate of 12% -- arriving at a conclusion of value for \$867,800.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* "Sales prices of property in abnormal transactions not reflecting market value shall not be taken into

account, or shall be adjusted to eliminate the effect of factors which distort market value, including . . . foreclosure or other forced sales.” *Id.* If sales are not available to determine market value then “other factors,” such as income and/or cost, may be considered. § 441.21(2).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property’s correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Commerce asserts it relied solely on the income approach to arrive at its conclusions. First, we note Iowa law prefers the sales comparison approach before turning to other approaches to value. Commerce did not indicate whether sales were available, and thus, we may conclude it failed to prove the property is over assessed on this basis alone. Examining the evidence it did submit, Commerce deducted the taxes as an expense and relied on actual income and expenses rather than market income and expenses, which is an atypical method to establish value for assessment purposes.

The Board of Review also relied on Commerce’s actual income and expenses to arrive at its decision to reduce the assessment to \$867,200 in its income approach. Unlike Commerce, however, the Board did not deduct real estate taxes as an expense, but rather loaded the capitalization rate to arrive at a total loaded rate of 12%.

Based on the foregoing, we find Commerce has failed to support its claim the property is over assessed.

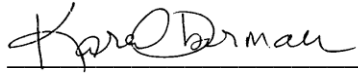
Order

IT IS THEREFORE ORDERED the January 1, 2015, assessment of the subject property as set by the Board of Review is affirmed.

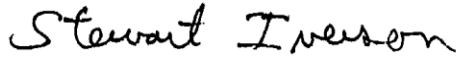
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court

where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 4th day of May, 2015.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:

James Johnson

Jack Faith